

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:03CR101
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
SOLOMON L. COFFEY,)	
)	
Defendant.)	

This matter is before the Court on the motion for leave to withdraw and for a continuance (Filing No. 148) filed by defense counsel, James R. Kozel.

Defense counsel requests leave to withdraw based on the Defendant's indication that he wishes to pursue issues in conjunction with the pending motion for new trial including counsel's alleged failure to follow the Defendant's instructions in preparing for trial and with respect to interviewing prospective trial witnesses. Defense counsel also reasons that a conflict of interest makes it impossible to further represent the Defendant and that withdrawal is "mandated by the Code of Professional Responsibility." (Filing No. 148.)

The motion for new trial was filed and supported by a brief. The government's response is due on January 30, 2007. Once briefing is completed, the Court will determine whether to hold an evidentiary hearing. Therefore, unless a hearing is held defense counsel has completed the necessary work with respect to the pending motion. The issues that the Defendant wishes to raise are not the type of issues appropriate for a motion for new trial. Rather, such allegations may be raised in a motion pursuant to 28 U.S.C. § 2255. The Court notes that it does not advocate the filing of such a motion and that the record shows Mr. Kozel's zealous representation of Mr. Coffey through the jury trial, on

appeal, and in conjunction with the pending motion. Under the circumstances presented, the Court will deny the motion without prejudice.

IT IS ORDERED that the motion for leave to withdraw and for a continuance (Filing No. 148) filed by defense counsel, James R. Kozel is denied without prejudice.

DATED this 8th day of January, 2007.

BY THE COURT:

S/Laurie Smith Camp
United States District Judge